

**FAUQUIER COUNTY
OFFICE OF THE COUNTY ATTORNEY**

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MEMORANDUM

TO: Board of Supervisors

FROM: Tracy A. Gallehr, Assistant County Attorney

THRU: Paul S. McCulla, County Attorney

DATE: September 8, 2004

RE: Offer to Sell Land for Recreational Purposes – Trifam Systems, Inc.

There are several parcels of land located in the Lee Magisterial District of the County dedicated to common open space. The parcels are owned by Trifam Systems, Inc. and are located in Bealeton (PINs 6889-94-9805-000, 6899-03-8862-000 & 6899-13-1316-000). These parcels adjoin the Fox Meade subdivision and have frontage on Route 28, Crest Lane and Schoolhouse Road (Route 661). The parcels contain a total of 6.3696 acres and are assessed for a combined value of \$72,200. The real estate taxes have been delinquent on these parcels since 1994 and the current delinquent balance is approximately \$8,000.

At the time of subdivision, these parcels should have been conveyed to a homeowner's association. However, a homeowner's association was never formed for the Fox Meade subdivision. If an association existed and had taken title to these parcels, they would no longer be assessed or taxed as separate parcels. The value of the common open space would have been added to each lot in the subdivision. It is extremely likely that the combined increase to each subdivision lot would be less than the current combined assessed value.

This property is assessed at a rate far exceeding the true value of these parcels. The most obvious error is that the assessment for one of the parcels includes \$30,000 for a home site which would not be allowed on this property. I have confirmed with the appraiser used in the tax sales cases that these parcels have no marketability. Therefore, I would not be able to sell these parcels in a tax sale.

The owner of Trifam Systems, Inc., Gary Weaver, has offered to sell for the amount of the delinquent taxes or donate these parcels to the County for recreational purposes. These parcels are limited to recreational uses and public recreation is an acceptable use. The Fauquier County Parks and Recreation Board considered the request to accept these parcels and have expressed a desire to accept them with the condition that they do not assume responsibility for the maintenance of the stormwater management facility located on one of the parcels.

Although possible to draft a Deed to the property which is exempts maintenance of the stormwater management facility, I do not believe this will ultimately lead to the result sought by Parks and Recreation: a perfectly operating system for which they are not responsible for

maintenance or liable for its failures. Trifam Sytems, Inc. may decide to form a homeowner's association to assume to maintenance of the facility. The residents of Fox Meade have already expressed their strong desire not to have a homeowner's association and are unlikely to keep the association registered with the SCC and collect funds necessary to improve or maintain the system.

The County Engineer, Christer Carshult, is inspecting the stormwater management facility on the property and will report the condition of the system prior to the Board's meeting on September 9th.

Should the Board of Supervisors desire to acquire this property for Parks and Recreation, there are two options:

1. Fauquier County could offer to purchase the property by General Warranty Deed from Trifam Systems, Inc. for the amount of delinquent real estate taxes through the date of sale. This option is strongly preferred by Trifam Systems, Inc. Barring any yet undiscovered title problems, I was advised by Cardinal Abstract Co. that they would issue a title insurance policy for this transfer.

This option also gives the County the ability to negotiate concerning the stormwater management system. The County could decide not to accept responsibility for the system, demand that the system be improved before transfer, or demand an amount of money necessary to improve the system at the time of transfer.

Fauquier County Zoning Ordinance Section 6-206.4 governs the transfer of common open space. That section states, ". . . nor shall such organization (homeowner's association) dispose of any common open space, by sale or otherwise, except to an organization conceived and organized to own and maintain the common open space, without first offering to dedicate the same to the County or other appropriate governmental agency." Therefore, our Zoning Ordinance seems to contemplate the ownership of such common open space by the County. Once owned by the County, the County assumes the position of the non-existent homeowner's association.

2. Fauquier County could initiate a tax sale proceeding and join Trifam Systems, Inc. and all the owners of lots in the subdivision in the case. At the conclusion of the proceeding, the County could ask the Court to order the property sold to the County.

This would be a long and expensive proceeding. There are more than 100 lot owners in the subdivision that must be joined as defendants in the litigation along with all the trustees of deeds of trust and lien holders on the properties. Managing this litigation with more than 200 defendants would severely limit my ability to work on other cases. However, the tax sale proceeding would extinguish any property rights potentially claimed by the homeowners of the Fox Meade subdivision. The risks of any homeowners objecting to the transfer of the common open space to the County are probably far outweighed by the time and expensive of the tax sale proceeding. Additionally, many Fox Meade homeowners will be shocked and terrified by the prospect of being joined as a defendant in the tax sale case.

An additional drawback to this method is that the County would have no leverage to demand that the stormwater management system be improved nor would we have the ability to take title to the property without assuming responsibility for the system.

If the Board of Supervisors desires to accept this property, I advise acquiring title by general warranty deed from Trifam Systems, Inc. contingent on being able to obtain title insurance for the property.

Chester Stribling, Larry Miller, Director of Parks and Recreation, and I met with the residents of the Fox Meade subdivision to discuss this proposal at Cedar Lee Middle School on August 9, 2004. The homeowners present did not want to form a homeowners' association and did not want to acquire these parcels. The majority of those present were in favor of Parks and Recreation taking over these properties. They hope the change in ownership will result in better maintenance and prevent its use for ATVs and other more destructive recreational activities.

If you have any questions or would like any additional information, please do not hesitate to contact me.